

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**YOUNES LAFDI**

**v.**

**DAVID HOLMAN, OFFICER SMITH,  
and CITY OF FORNEY**

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**CASE NO. 3-22-CV-0922-S**

**DEFENDANTS HOLMAN, SMITH AND CITY OF FORNEY’S RENEWED  
12(B)(5) MOTION TO DISMISS FOR INSUFFICIENT PROCESS AND BRIEF IN SUPPORT**

COME NOW Defendants **DAVID HOLMAN, OFFICER SMITH, and CITY OF FORNEY**, (“Forney Defendants”) and in accordance with the Court’s ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 16], file their RENEWED MOTION TO DISMISS FOR INSUFFICIENT PROCESS AND BRIEF IN SUPPORT, as follows:

**I.  
INTRODUCTION AND PROCEDURAL HISTORY REGARDING FAILED SERVICE**

The pro se Plaintiff filed suit on April 22, 2022, against two City of Forney Police Officers [Officer Holman and Corporal Smith] along with the City of Forney, because of a ticket he received for a road rage incident between the Plaintiff and another driver occurring November 10, 2021.<sup>1</sup> Plaintiff, on August 12, 2022, after a jury trial, was unanimously convicted of the criminal offense [Change Lane When Unsafe] and the jury imposed the maximum sentence and further assessed all costs against him.<sup>2</sup>

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<sup>1</sup>See, generally, COMPLAINT, DKT. 3, paragraphs 11-15

<sup>2</sup>A certified copy of the JUDGMENT AFTER JURY VERDICT in the case styled *State of Texas v. Younes Lafdi*, Cause No. 2101672 in the City of Forney Municipal Court of Record No. 1 was attached as Exhibit No. 1 to Defendants’ REPLY TO PLAINTIFF’S RESPONSE TO THEIR MOTION TO DISMISS FOR INSUFFICIENT PROCESS AND BRIEF IN SUPPORT. See, Dkt 14-1

Regarding the botched service in this Federal lawsuit, Plaintiff - at the time in cahoots with his Internet self-promoting “custodian of the court” Jose decastro<sup>3</sup> - wholly failed to properly served any of these Defendants. Thus, on July 15, 2022, Defendants Holman, Smith, and the City of Forney filed their MOTION TO DISMISS FOR INSUFFICIENT PROCESS AND BRIEF IN SUPPORT [Dkt. 10], to which the Plaintiff responded [Dkt. 13], and to which Defendants then replied. [Dkt. 14].

Magistrate Judge Tolliver on January 10, 2023, issued her comprehensive FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 15] wherein she detailed the applicable law, the Plaintiff’s failings, and then recommended that the Plaintiff be allowed the opportunity to properly effectuate service upon these Defendants. Notably, the Plaintiff failed to object the Magistrate Judge’s findings, conclusions, and recommendations.<sup>4</sup> This Court, on March 3, 2023, entered its ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 16]. In such ORDER, in no uncertain terms, the Court ordered:

Defendants David Holman, Officer Smith, and City of Forney's 12(b)(5) Motion to Dismiss for Insufficient Process [ECF No. 10] is **GRANTED IN PART**. In the event Plaintiff fails to properly serve any Defendant within 21 days of the entry of this Order, at Defendants' re-urging, this case should be **DISMISSED WITHOUT PREJUDICE** as to the Defendant or Defendants not properly served.

See, Dkt. 16 (emphasis in original). Thus, the deadline for the Plaintiff to properly serve these Defendants would have been on or before March 24, 2023.

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<sup>3</sup>The PROOF OF SERVICE are signed by a “Jose decastro” with an address in Santa Monica, California. See, DKT 8-9. Presumably he is the same person on the video submitted in conjunction with Defendants’ MOTION TO DISMISS FOR INSUFFICIENT PROCESS AND BRIEF IN SUPPORT [Dkt. 10-1]. Throughout his video, Mr. decastro spouts his personal skewed beliefs about the law and freely gives bad advice about filing and service of a federal lawsuit. He also curiously describes himself as a “custodian of the court”. See, Dkt. 10-1 at 2:04-2:07.

<sup>4</sup>Magistrate Tolliver included detailed “INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT” in her FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 15] so there is no legitimate reason why Plaintiff could not have appealed if he believed the Magistrate Judge was in any way incorrect.

## II.

### **PLAINTIFF WHOLLY FAILED TO REMEDY DEFICIENT ATTEMPTED SERVICE**

The Plaintiff has failed to serve any of these Defendants and the “custodian of the court” decastro has been notably absent and pleasantly silent.<sup>5</sup> It would seem that any diligent Plaintiff, upon receipt of the January 10, 2023, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 15] would have promptly properly effectuated service. But this Plaintiff did not. More problematic, however, is that even after the clear warning in this Court’s ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 16], Plaintiff still did not properly serve any of the Defendants - and to Defendants’ knowledge never even bothered to try at all within the mandated twenty one (21) day time frame to do so.

Simply put, from January 10, 2023 [when Plaintiff should have realized that his obligation to properly serve these Defendants was required] until the filing of the instant RENEWED MOTION TO DISMISS FOR INSUFFICIENT PROCESS, more than ninety seven (97) days expired, and at least twenty four (24) days have passed from the deadline set out in this Court’s ORDER [Dkt. 16]. Plaintiff’s service of the SUMMONS remains wholly deficient if not actually non-existent at this point, and thus, as this Court clearly forewarned, dismissal without prejudice of this lawsuit should follow.

**WHEREFORE, PREMISES CONSIDERED,** Defendants **DAVID HOLMAN, OFFICER SMITH,** and **CITY OF FORNEY** pray that the Court grant their RENEWED MOTION TO DISMISS FOR INSUFFICIENT PROCESS; that it dismiss Plaintiff’s claims and pleas for damages, and they have such other relief, at law or in equity, to which it may show themselves entitled.

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<sup>5</sup>“Custodian of the court” decastro seems to have quickly abandoned the pro se Plaintiff to fend for himself once his [decastro’s] blustering blunders were exposed. A licensed attorney in this scenario could possibly face malpractice claims and/or State Bar grievances; decastro just slithered back to the Internet without any apparent recourse for his incompetent advice about federal lawsuits and service of same - except Internet notoriety for failure.

Respectfully submitted,

By: /s/ *Robert J. Davis*

**ROBERT J. DAVIS**

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**ATTORNEY FOR DEFENDANTS**

**DAVID HOLMAN, OFFICER SMITH,**

**AND CITY OF FORNEY**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2023, I electronically filed the foregoing document with the clerk of the Court for the Northern District, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: None. Additionally, a copy of the foregoing was mailed to the pro se Plaintiff by certified mail, return receipt requested.

/s/ *Robert J. Davis*

**ROBERT J. DAVIS**